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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 266

JOSEPH ALCIDE LANDRY,

Petitioner,

versus

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,

Respondent.

BRIEF FOR RESPONDENT

RICHARD B. MONTGOMERY,
Attorney for Respondent.

LOUIS W. DAWSON,
RICHARD B. MONTGOMERY, JR.,
Of Counsel.

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BRIEF IN ANSWER TO PETITION FOR A WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

It is respectfully submitted that this petition for a writ of certiorari should not be granted under Rule 38 of this Court. Nowhere in the petition or the brief in support thereof are any facts or reasons alleged which comply with the requirements of this Court as to the granting of such writs. The brief merely asserts that the matter is one of general interest and that the Court of Appeals erred. The Specification of Errors and reasons for granting the writ do not contain any reason which would fulfill the requirements of Rule 38 of this Court.

The petitioner does not state, and as a matter of fact there is not involved either (1) a federal question of substance; (2) a decision in conflict with the decision of another Circuit Court of Appeals on the same matter; (3) an im-

portant question of law probably in conflict with the applicable local decisions; (4) an important question of general law decided in a way probably untenable or in conflict with the weight of authority, or (5) an important question of federal law which should be settled by this Court. The case, as is shown by the petition, involved solely the question of the interpretation of a life insurance policy and nothing more.

That there is no question of federal law involved is self-evident. That there is no decision by any United States Circuit Court of Appeals in conflict with the decision of the Circuit Court of Appeals below is conceded by petitioner (brief in support of petition for certiorari, p. 14). The reference to *The Mutual Life Ins. Co.* v. *Drummond,* 111 F. (2) 282 is utterly irrelevant. The question of the effect of the requirement that proof of disability be filed before age 60 was in no way involved in the *Drummond* case although the Court, by way of *dicta,* specifically approved the general rule followed by the Court in this case that the submission of proof before age 60 was a condition precedent the fulfillment of which was necessary to invoke the disability coverage even under those policies which made provision for retroactive benefits.

Similarly it is conceded by petitioner that there is no decision of any Louisiana Court contrary to the decision of the Court of Appeals. Indeed petitioner argues that this question is *de novo* everywhere, (brief in support of petition for certiorari, p. 14).

The petitioner at most seeks, but erroneously, to show that the Circuit Court relied on Louisiana Law which is not existent. In his Specification of Errors No. 4, he says:

> "(4) The Circuit Court of Appeals erred in holding (R. 93) as follows:
>
> > "but more important for us, it is settled in Louisiana from which this case comes, that such a provision is a condition of, and compliance with it is essential to recovery."

The petitioner suggests that the Court of Appeals, in the above language, was referring to decisions of Louisiana Courts interpreting the specific provisions involved in the case at bar. This is not so. What the Court was saying was that Section 3 of the policy—the main disability clause —created a condition precedent and that there was no ambiguity in that section. This is conceded by the petitioner (petition for certiorari, p. 6) and was so held by the District Court, 54 F. Supp. 306, pp. 358, 359.

The language of the opinion upon this point fully quoted is as follows, 148 F. (2) 699 (p. 701):

> "While a few cases may be found holding that a provision like that of Section 3, that the insured must furnish proof of disability before attaining the age of sixty is not a condition of recovery, the overwhelming weight of authority is the other way. But more important for us, it is settled in Louisiana, from which this case comes, that such a provision is a condition of, and compliance with it is essential to recovery. The district judge held, and plaintiff concedes, that, but for the supplementary provision, this would be so here."

This is, of course, the law in Louisiana and nearly everywhere. It was basic to the Court's decision, but was only preliminary to the ultimate question, namely the meaning of certain supplementary language endorsed on the contract. This matter of construction involved in the particular policy was decided in favor of The Mutual Life.

The petitioner's brief is thus nothing more nor less than an attempt to re-argue a simple question of construction of a contract decided carefully and after full deliberation by the Circuit Court. Because the opinion of that Court is so clear and conclusive we will not burden this Court with further argument on the merits or extensive reference to the Circuit Court's opinion which speaks for itself.

In short there is no federal question involved, no conflict among circuits, no conflict with local law or the weight of authority. It is, therefore, respectfully submitted that the petitioner has shown no reasons for the granting of a writ of certiorari. The petition should be denied.

Respectfully submitted,

RICHARD B. MONTGOMERY,
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LOUIS W. DAWSON,
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